

Interrogatives in the field: Imaginary questions, real answers, and the law¹

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0. Introduction

On an otherwise ordinary day, we may listen to a contemporary philosopher *question* Immanuel Kant's ideas and *respond* to them. We may see an ad with a picture of a missing pet that *asks* us "Have you seen me?". Or we may lose our keys and ask ourselves "Where did I just put me?". In actuality, a modern-day philosopher cannot bring Kant to the modern era to engage in simultaneous debate with him. A missing pet cannot talk to those who are looking for him. And nobody can be split in two parts and have the two selves interact with each other. However, cognitive linguists, and more specifically mental space and conceptual blending researchers, have shown that such apparent impossibilities do occur and are even quite common at the conceptual level (Fauconnier & Turner 1996, 2002; Lakoff 1996). This paper deals with the use of *imaginary* or *fictive* questions of the sort exemplified above as argumentative devices that can structure on-line discourse and reasoning in legal settings. The theoretical perspective used is the theory of *conceptual integration networks* or *conceptual blending* (Fauconnier & Turner 1996, 1998, 2002).

1. Conceptual integration networks

Conceptual blending is a theoretical framework of on-line dynamic construction of meaning. The basic cognitive operation involved in *blending* is the combination of two or more *input spaces* to produce another space, the blend. That space inherits partial structure from the input spaces and has emergent

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structure of its own. Conceptual integration networks are constituted by *mental spaces* (Fauconnier 1994). These are mental constructs of potential realities, which are being set up as discourse unfolds. Spaces are structured by *elements*, which represent conceptual entities, and they are enriched by *cultural models* and *frames*. Frames are structures of role-value pairs like the family, a debate or a conversation.² The integration of a frame as an input space with some roles that are mapped onto certain kinds of elements as values in another input space constitutes a so-called *simplex network* (Fauconnier and Turner 2002). A theory of mental spaces and conceptual blending is extremely useful for an account of legal argumentation, since, as Tannen (1998) points out, the very kernel of the adversary system is the different meaning constructions of the same objective reality by the counsels of each side (see also Goodwin 1994).

2. Analysis

The data discussed below comes from an ethnographic study of a lawyer's closing argument to the jury in a high-profile murder trial which took place in a California court in the fall of 2000.³ The defendant was accused of brutally killing his wife with a fire poker in the couple's home. Two examples will be discussed, in which the lawyer produces a question that sets up an imagined communicative interaction. These are: a) the response to a rhetorical question that the counsel of the opposite side was supposed to have uttered; and b) the predicative use of an interrogative sentence type as a definition.

2.1. Rhetorical questions, asked and answered

Rhetorical questions challenge us with an interesting paradox. They are clearly not information-seeking, and yet they are produced as interrogatives, which are conventionally associated with question asking. This paradox becomes particularly intriguing if one considers the frequent use of rhetorical questions in communicative contexts like litigation, in which the compulsive force of the argument does not leave much room for unnecessary embellishment. Indeed, rhetorical questions are extremely common argumentative devices in the courtroom (cf. Ilie 1994), and they are actually recommended by legal tacticians to both lawyers and witnesses alike (cf. Casanovas 1998; O'Barr 1982;

² See Coulson (2001) for a detailed explanation of frames, and the operation she calls *frame-shifting*.

³ The data was collected within the project "An ethnographic approach to discourse processes in court" (# 020033S), reviewed and approved by the UCSD Human Subjects office. Ethnography included: i) participant observation, ii) official transcripts, iii) written and visual media coverage, v) official documents, and vi) interviews with the main legal professionals and lay participants. Written informed consent was obtained from all informants, whose participation in the study was entirely voluntary. In order to protect the confidentiality of both the informants and the persons referred to in the transcript, all names have been changed.

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I.C.D.A.'10⁴). I assume the following characterization of rhetorical questions (Pascual 2001, to appear): i) they constitute a *pragmatic* rather than a *grammatical* category (Ilie 1994); ii) they are to be heard as *questions* but understood as *statements* (Ilie 1994); iii) they suggest a *clash* between two presupposed scenarios; and iv) they set up an *imaginary dialogue* in which a communicator *a* attempts to convince *b* that *c*'s argument is incorrect. In this section I explore the conceptual blends behind a *fictive* rhetorical question asked and answered by a lawyer. The example to be discussed, extracted from the prosecutor's closing argument, is the following (my italics):

- (1) Now, Mr. Loeber [defense counsel] questions, "*Well, how could the blood get on the end of the poker, because the poker is not hitting her in the head?*" [...] The reason why blood gets on the end of the poker [...] is centrifugal force.

In this piece of discourse the lawyer appears to respond to an actual question previously raised by his adversary. If one looks at the argument referred to, however, it turns out that such a question was actually never produced. Instead, what had been said was (my italics):

- (2) And we know from Dr. Stone's [spatter expert] testimony and from our own common sense, when we look at these unfortunate, sad photographs of Rachel [victim] from the coroner, that *there were no wounds there that correspond to the end of a fire poker*. They're linear wounds. That's why we have linear, linear, linear. But to get that castoff spatter *we have to have blood on the end of the poker*, and that would get there most likely -- we've had *no other explanation* -- by the end of the poker hitting Rachel's head.

In (1) the utterer presents the whole passage above condensed in a single sentence, a rhetorical question that he then proceeds to answer. When interviewed after the trial and asked to comment on that passage, the prosecutor explained that his adversary "was saying that, you know, if it was a poker, *why aren't there poker marks in her head?*" He then concluded: "so, I was just *responding*". Note that not only did the defense counsel *not* produce any of those questions, but that the argument to which the prosecutor is *responding* occurred a good forty-five minutes prior to his response. Moreover, they both appear embedded in long monologues addressed to the jury. In order for the question-answer operation in (1) to occur at all, the whole interactional sequence, that is the discourse by the prosecutor and the defense counsel respectively, needs to be merged with a *debate*

⁴ The 10th annual I.C.D.A. Trial Skills Academy, held at the California Western School of Law. April 21st-28th, 2001. Ethnographic notes.

frame into a *simplex network* (Fauconnier & Turner 2002). One input contains the debate frame with turntaking and participant roles and no values, and the other input contains unframed elements, namely the actual arguments produced and the two lawyers. The inputs are then matched by a Frame-to-value connection.

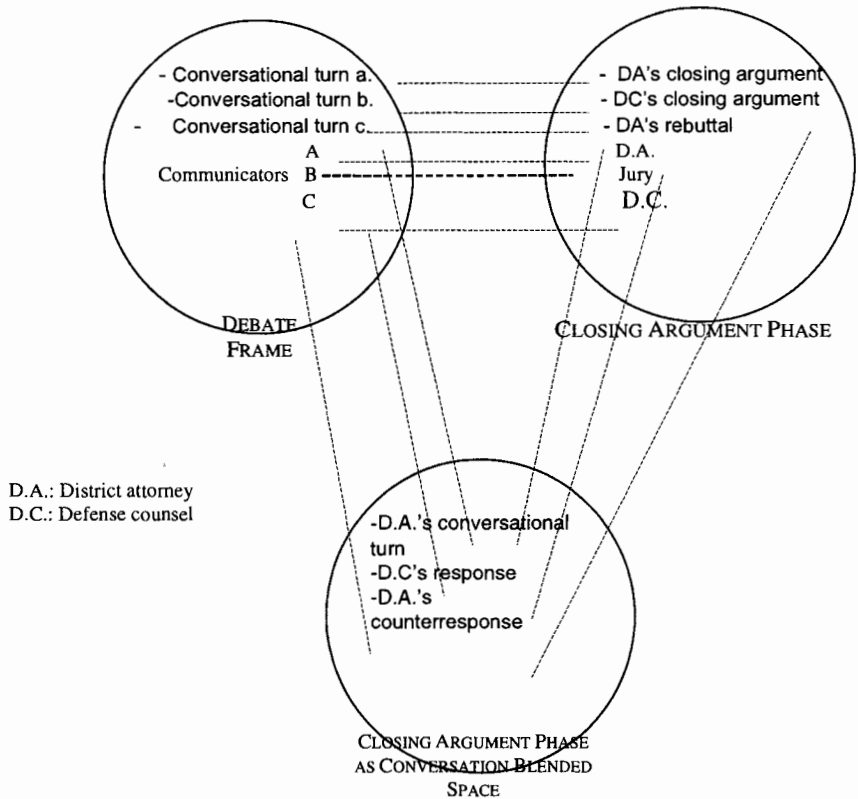


Fig. 1. Closing arguments phase as debate blend.

Each communicative phase in a trial (e.g. closing argument, direct- and cross-examination) seems to be regarded by participants as a single turn in an imagined debate with the opposite side. Thus, each communicative *turn* is to be *responded* to by the adversary's subsequent turn, which may then be further countered by yet

another turn. The “closing argument–debate” network seems to be a conventional blend in the courtroom. In the American legal system this is overtly manifested in different interactional phases: “direct” vs. “redirect” and “cross” vs. “re-cross” examination; and “closing argument” vs. “closing argument *rebuttal*”. Significantly, in the redirect, re-cross and rebuttal phases, one can only discuss issues that were brought up in the prior direct-, cross- and closing argument respectively. This feature is directly projected from the debate frame. It should be noted that the conceptualization of subsequent monologues as a simultaneous interaction is not restricted to the legal setting. Communicative participants often seem to conceptualize subsequent communicative performances, both written and oral, as different turns in a larger conversation-like structure. A well-known example from the conceptual blending literature which seems to undergo that process is Fauconnier & Turner’s Debate-With-Kant (1996, 2002), mentioned in the introduction. A discussion between two philosophers of different centuries presents no problems at the conceptual level, couched as it is in terms of the turn-taking pattern of the ordinary face-to-face conversation.

Once the overall closing argument phase of the trial is condensed into a sequence of turns in a debate, the projection of a question-answer pattern as in (1) becomes almost self-explanatory. What seems less obvious is the fact that the rhetorical question in (1) should be immediately followed by a response.⁵ However, under a non-derivational paradigm like the one adopted here, the very possibility of responding to a rhetorical question – even a fictive one – is easily explained by the hypothesis that rhetorical questions *are* questions, and that they are question *uses* rather than *kinds* (Ilie 1994). Notice that no linguistic means indicates that the question in (1) is to be understood as rhetorical. At the same time, the power of responding to a rhetorical question seems to derive from the fact that these are still to be understood as *statements*, albeit heard as questions.⁶

⁵ The production of a rhetorical question only to be subsequently answered by the same utterer seems to contradict the definition of rhetorical question as those that “do not expect an answer,” given by some scholars and the 1988 edition of the Longman Dictionary of the English language rhetorical (see Ilie 1994: 42).

⁶ A similar example of a response to a rhetorical question raised by the adversarial counsel in a prior closing argument comes from a criminal trial in a Spanish court. The defense was arguing that since the defendant and the victim were suffering from deep financial problems, the defendant had aided the victim in committing suicide. The private prosecutor confronted this version of the facts with a rhetorical question: “*Quién no sufre por problemas económicos?*” [“Who doesn’t have financial problems?”]. When his turn came, the defense counsel quoted this question – as rhetorical – and responded to it, in a way that was consistent with his explanation of the facts: “*Quién no sufre por problemas económicos?, nos dice la acusación particular. Yo se lo diré. No sufre por problemas económicos una niña de diecisiete años. No tiene que sufrir por problemas económicos*” [who doesn’t have financial problems? Says the private prosecutor. I will tell you who. A seventeen-year old kid does not have financial problems. She shouldn’t suffer from financial problems.] Data from GRES (UAB Sociological Studies Group). 1997. El Informe del Abogado de la Defensa ante el Jurado. Juicio por Asesinato. Video code: T25.jj.4.

Let us now zoom in and focus on the particular elements involved in the blend prompted in (1). The prosecutor's memory of the argument he attempts to attack, which runs through many sentences, is compressed into one. This *compression* must be allowed by some commonality between the two elements that get mapped and blended, namely the counsel's argument in input one and a rhetorical question frame in input two. First, if rhetorical questions are truly pragmatic categories and to be "heard as questions but understood as statements", then it follows that for the argument in (2) to get compressed into a rhetorical question it must be readable as both a question and a statement. Second, if the argument of the defense counsel is to be fully integrated with a rhetorical question frame, then it should also "suggest a *clash* between two presupposed scenarios". Lastly, the argument in (2) should prompt an "imaginary triologue in which a communicator *a* attempts to convince *b* that *c*'s argument is incorrect". The basic categorization of rhetorical questions does seem to match with the skeletal structure of the argument in (2). The counsel is making two explicit *statements*: a) "there were no wounds there that correspond to the end of a fire poker", and b) "we have to have blood on the end of the poker". By so doing, the counsel is pointing out the *contrast* between two mental spaces: a) a reality space in which the victim's wounds do not seem to correspond to the end of a fire poker, and b) another reality space in which blood spatter suggests that there must have been blood at the end of the poker. Both reality spaces are structured by frames and cultural models ("our own common sense"). The latter scenario is structured by a cultural model of force-dynamics. In the blend, there is an inner space cause-effect mapping linking the end of the poker hitting the victim's head with blood at the end of the poker (and subsequently blood spatter found by the investigators and experts). By presenting these two contradictory scenarios, the defense counsel challenges the prosecution's theory of the case. According to the prosecution, the fire poker that is missing from the couple's home corresponds to the murder weapon that was never found, a claim the defense wishes to cast reasonable doubt upon. If the blood spatter shows that there must have been blood at the end of the poker, and the victim was not hit with the end of a poker, then the question surely arises: *how could the weapon have been a poker?*

Lastly, the *space-builder* that introduces the question in (3), the verb "to question" rather than "to ask" indicates a rhetorical rather than an answer-seeking use of the question. This verb choice frames the defense counsel's verbal space within a confrontation rather than an information-seeking frame, which is consistent with the confrontational feature of rhetorical questions assumed here. Notice that in the adversary system, the role of the defense is not to prove the defendant's innocence, but rather to convince the jury that there is reasonable doubt as to guilt. At the same time, the prosecution will argue the defendant's guilt before the jury, beyond the possible doubt of which the defense may have convinced the jury. The basic communicative structure of confrontational argumentation, and then surely of the courtroom, fits perfectly with the skeletal structure that characterizes rhetorical question use: "communicator *a* attempts to

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convince *b* that *c*'s argument is incorrect.

To conclude, it seems that producing an imaginary rhetorical question that one ascribed to one's adversary, and subsequently responding to it constitutes a powerful means of persuasion. It brings the issue under dispute and the legal theory of the case to human scale, while at the same time it highlights the very adversarial structure of confrontational communication. Moreover, the whole network is supported by culturally meaningful conceptual blends.

2.2. A how-to definition: The law vs. the application of the law

In this section I focus on a definition with interrogative syntax. In particular, I deal with the predicative use of a question in the litigator's definition of a legal term to the jury. The analysis will be in terms of an imaginary or fictive question that reproduces the nature of jury deliberation. The piece of discourse to be discussed is:

- (3) Express malice means, simply, *was it an intentional killing, okay?*

This utterance was produced early in the prosecutor's closing argument. At this point, the district attorney is telling the jury about the laws that govern jury deliberation, and is giving definitions of the charges that they will have to accept as proven or not. What is most striking about (3) is of course the use of an interrogative sentence type as a definition. The structure used is basically: NP + *means* + YES/NO INTERROGATIVE, whose semantics can hardly be looked upon as informative. In contrast, the judge's definition of that same term, "express malice" in his instructions for the jury in that same case was simply: "the unlawful intention to kill a human being". Let us have a look at the discourse immediately surrounding the utterance in (3):

- (4) Express malice means, simply, *was it an intentional killing, okay? [...]* *Did the person who killed think about it? Did they have a choice? [...]* But what premeditation and deliberation really mean is, *was there weighing? Did the person doing the killing consider what it would do to the victim, what it would do for him? [...]* Well, let's apply this. If you apply it to this case, *was there planning? Of course there was planning.*

First, a set of questions are produced in order to explain the meaning of "express malice" and its related terms "premeditation and deliberation". Then, the definitions are "applied" to the case at hand. Such an application is through an introductory question, "*was there planning?*", which is subsequently answered in the affirmative by the utterer himself, "*Of course there was planning*". Even before the attorney gets to this final question-answer pair, it seems that by merely explaining the meaning of legal terms through questions, he is already simultaneously teaching the jury on the law and reasoning with them on the kinds of decisions, the kinds of *questions* that they will be confronted with in

deliberation. There seems to be a conceptual blend involved, in which the definition of the term gets fused with its application. A similar example is provided by the defense counsel in that same case:

- (5) What beyond a reasonable doubt *means* is that when you look at the case in totality, *do you know, do you have any reasonable doubt as to whether or not the defendant inflicted these injuries on Rachel.*

In that case too, the definition of a legal term, “reasonable doubt”, is presented through the supposed reasoning process that the jury will have to go through in deliberation when deciding whether the term does or does not apply to the case at hand. Just like we may ask ourselves “*Where did I just put them?*” when we lose our keys, jurors are also presented by lawyers in their discourses as asking questions to themselves and each other when trying to come up with the right verdict.⁷ It seems that the “definition~application” blend also recruits structure from the question-answer conversation frame. Indeed, when asked about his frequent use of questions in his definition or introduction of the legal charges, the prosecutor in the case explained:

it may be a question that the **jury** might have! you know, that . that even though the jury hasn't got to **ask me** that question I think they **may** ask that question, so I'm gonna **ask it for** them and then I'm gonna respond to it! [...] [I am] answering questions that I think the jury will be asking in the jury room.

Since the jurors remain silent in their seats, and are not supposed to interrupt the counsel's argumentation with questions, counsels need to attempt to put themselves in the jurors' minds and create the dialogue the jury may otherwise engage in. In that sense, the counsel speaks for the jury in a similar way that the pet owner speaks for the pet in the lost pet ad in the introduction. The same individual in actuality, the public prosecutor uttering the discourse in (3) and (4) needs to split himself into multiple identities simultaneously. He needs to be the questioner as much as the provider of the answers. At the same time, he is not merely splitting himself into a double questioner-answerer role, but he is also blending his identity with the jury as audience, and with the different jurors in deliberation in the jury room.

Interestingly, both the definition~application integration and the identity blends seem to be grounded on a stabilizing aid or *material anchor* (Hutchins 2002). Notice the verdict form that he jury in this case had to fill in:

⁷ In the popular O.J. Simpson trial, for instance, the district attorney told the jury: “all you have to do is decide *is it more probable than not, did he probably do it?*”. Data from the free on-line transcripts of Sharon Rufo, et al. vs. Orenthal James Simpson, et al. case, Los Angeles, CA, 1996. Vol.50. Court TV: www.courtTV.com/casefiles/simpson.

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We, the jury in the above entitled cause, find the defendant, X, _____ [...] (GUILTY) (NOT GUILTY)
And we further find that the above offense _____ willful, deliberate, and
(was) (was not)
premeditated, within the meaning of Penal Code section 189

The jury needs to fill in the blanks with either of the two possibilities that are specified for them. The cognitive task assigned to the jury is guided through an observable object, the verdict form, with which they need to interact during deliberation. This piece of paper undoubtedly models the jury's reasoning process and the use they make of the definitions of the legal terms they have been told about during the trial. As it is, this material anchor contains the specification of the precise decisions to be made, the relevant questions to be answered. That is where their recollection of the meanings of legal terms needs to be applied. And a good litigator knows that, and will try to come up with useful *how-to* definitions, blends of the law and its application.

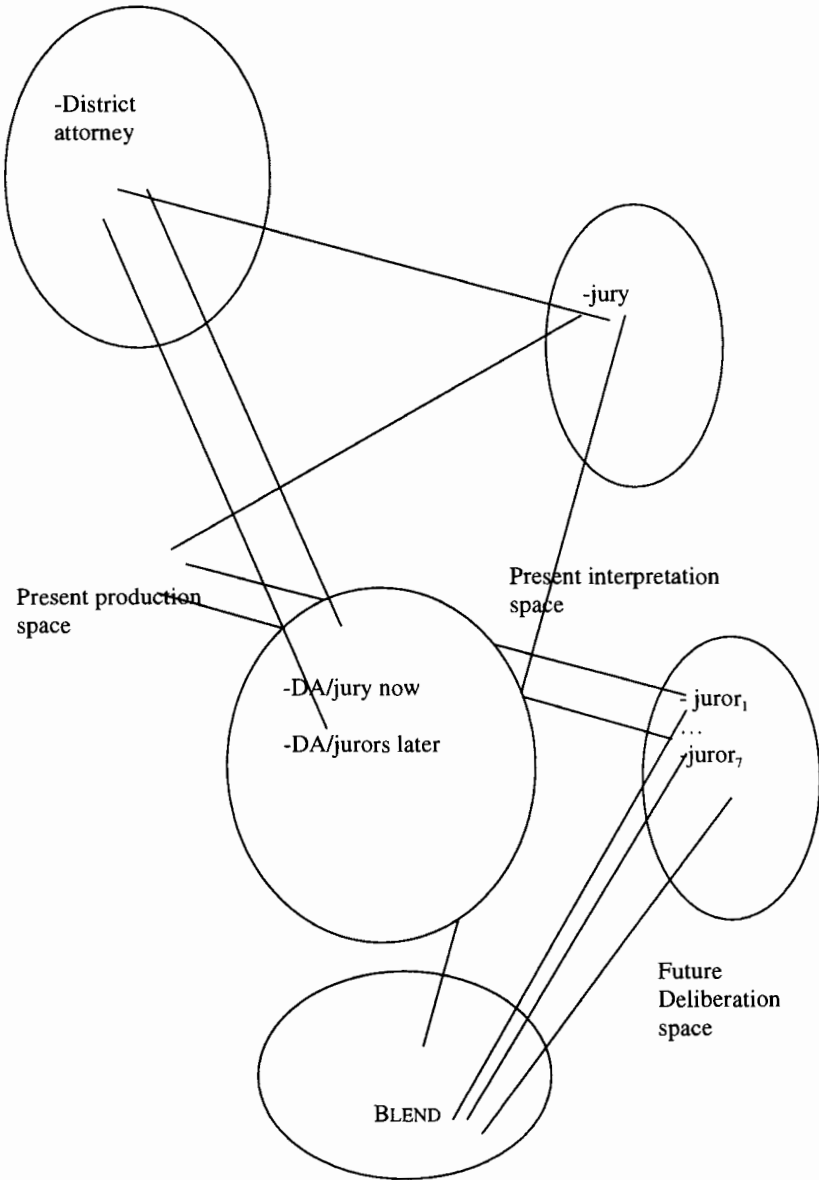


Fig. 2. Jury's deliberation: "Express malice means, *was it an intentional killing, okay?*"

In sum, it is clear that the ultimate goal of the litigator giving a definition of a legal term to the jury is not to educate them in the law. Rather the ultimate aim is to make sure the jury comes to the desired verdict. Thus, the counsel blends himself with the different jurors in a single-multiple identity blend, which conceptually integrates the present closing argument and the future deliberation. At the same time, the imaginary interaction the litigator sets up, draws the jury into the conversation, as those that will eventually answer the relevant question with him. This integration network has the persuasive power of turning addressees into co-constructors of discourse.

3. Final remarks

In this paper I have dealt with cases in which a question was produced to prompt an imagined situation of communication. In those cases, the schematic conceptual structure of situated question-answer interaction served as a frame to structure discourse flow and reasoning. I hope to have shown that there exists an interrelation between the production of particular question uses and the global socio-cultural configuration of the setting in which they occur. In contextualized settings, understanding a particular question use and a potential subsequent response to it may require more than a look at the semantics of the words or construction(s) in which they appear. Lastly, it seems that Conceptual Integration theory can be used to account for on-going interaction in institutional contexts.

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